IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/10/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO. 34020 OF 2002 AND WRIT PETITION NO.34024 OF 2002

Dr.K.Subburamu,
Associate Professor
(Crop Physiology),
Horticultural College &
Research Institute,
Periyakulam,
Theni District. .. Petitioner in
W.P.No.34020 of 2002
Dr.B.Rajamanickam,
Associate Professors
(Ag. Micro Biology)
Sugar Cane Research Station,
Tamil Nadu Agricultural
University, Cuddalore. .. Petitioner in
W.P.No.34024 of 2002
-Vs-

1. The State of Tamilnadu
rep. by its Special
Commissioner & Secretary,
Agricultural Department,
Fort St. George, Chennai-9.

2. The Vice Chancellor,
Tamil Nadu Agricultural
University, Coimbatore-3.

3. The Registrar,
Tamil Nadu Agricultural
University, Coimbatore-3. .. Respondents 1 to 3 in
both the above Writ Petitions.
4. H.Vijaya Raghavan,
Professor (Crop Physiology)
Tamil Nadu Agricultural
University, Coimbatore.

5. K.Manian,
Professor (Crop Physiology)
Tamil Nadu Agricultural
University, Coimbatore.

6. C.Vijayalakshmi,
Professor (Crop Physiology)
Tamil Nadu Agricultural
University, Coimbatore.

7. D.Durga Devi,
Professor (Crop Physiology)
Tamil Nadu Agricultural
University, Coimbatore. .. Respondents 4-7 in
W.P.340 20/2002

Writ Petitions filed under Article 226 of the Constitution of
India praying to issue a Writ of Certiorarified Mandamus as stated therein.

For petitioner : Mr.V.Venkatasamy

For respondents : Ms.V.Velumani for R1
Mrs.I.Geetha for R2&R3
Mr.Kandavadivel Doraisami
for R4-R7.

:O R D E R

Both the above Writ Petitions have been filed praying to issue a Writ of Certiorarified Mandamus to call for the records from the first respondent relating to proceeding G.O.Ms.No.270, Agriculture (AU) Department, dated 8.10.2001, quash the points in Clause 2.5 in so far as relaxing the minimum service in the feeder cadre of Associate Professor for promotion as Professor in the said Govt. Order and the consequential promotions made to the post of Professor pursuant to the said Govt. Order and to further direct the respondents 2 and 3 to promote the Associate Professors to the post of Professors under the Career Advancement Scheme as per the guidelines prescribed by Indian Council of Agriculture Research.

2. The case of the petitioners is that the first respondent has issued G.O.Ms.No.208, Agricultural Department, dated 27.3.1989 to the effect that the appointment of Assistant Professor in the Senior Scale or in the Selection Grade and the appointment of Assistant Professor to the post of Associate Professor and the appointment of Associate Professor to the Post of Professor is based on merits; that subsequently, the first respondent issued another G.O.Ms.No.360, Agricultural(AU) Department, dated 16.8.1989 for implementation of the University Grants Commission revised Scale of pay to the teaching staff of the said University; that thereafter, the first respondent issued G.O.Ms. No.270, Agricultural (AU) Department, dated 8.10.2001 for implementing the revised Career Advancement Scheme in the Tamil Nadu Agricultural University in conformity with the guidelines of Indian Council of Agricultural Research.

3. The further case of the petitioners is that according to the said Government Order, the post of Professor must be filled through direct

recruitment through All India Advertisement; that the first respondent has also relaxed the minimum service requirement of 8 years in the cadre of Associate Professor for promotion as Professor in respect of persons, who possess the Ph. Degree and a total service of 17 years and above in the University; that accordingly, the respondent has called for applications to the post of Professor from those Associate Professors, who have put in a total service of 17 years; that the petitioners herein have also applied for the said post; that the petitioners came to understand that such relaxation of minimum service requirement in the cadre of Associate Professors for promotion as Professor is contrary to the guidelines prescribed by the Indian Council of Agricultural Research.

4. The further case of the petitioners is that they preferred appeal to the first respondent pointing out the irregularities made in awarding promotions from the post of Associate Professor to that of Professor, contrary to the guidelines prescribed by the Indian Council of Agricultural Research for Career Advancement Scheme, but the petitioners have not received any reply from the first respondent. In such circumstances, the petitioners have come forward to file the above Writ Petitions praying for the relief extracted supra.

5. In the counter affidavit filed by the third respondent, for himself and on behalf of the second respondent, besides generally denying the allegations in the affidavit filed in support of both the above Writ Petitions, he would further submit that this University follows the orders of the first respondent Government, in respect of pay and allowances, promotion norms and procedures especially for elevation of the teachers prescribed by the first respon dent to higher cadres since the first respondent has granted aid to this respondent for functioning, payment of pay and allowance, pension etc. of teaching and non-teaching staff; that the Indian Council of Agricultural Research (ICAR), New Delhi has prescribed certain norms and procedure for the elevation of the Scientists working in the organisations under its control, but all such rules/regulations/guidelines of the ICAR have no binding on the respondents.

6. The further case of the third respondent is that in Clause 2.5 of the G.O.Ms.No.270 Agriculture (AU) Department dated 8.10.2001, the Government prescribed the minimum qualification, experience and other accomplishments required for elevation of the Associate Professor to the post of Professor; that the said provision contemplates that promotion may be made from the post of Associate Professor to that of Professor after 8 years of service as Associate Professor; that the said clause also contains a provision for relaxation of minimum service in the feeder cadre for promotion to higher cadre and according to which, the minimum service requirement of 8 years in the feeder cadre Associate Professor for promotion to the higher cadre, viz., Professor can be relaxed if the incumbent possess a Ph.D. degree and put in total service of 17 years and above including the service rendered in the next lower cadre viz. Assistant Professor in the respondent University.

7. The further case of the third respondent is that the Board of Management of this respondent University which is the Supreme policy making

authority of the University approved the implementation of the revised Career Advancement Scheme including the service relaxation clause prescribed in G.O.Ms.No.270 dated 8.10.2001 and therefore, the third respondent by a notification in Circular No.R3/7425/2001 dated 1.1 1.2001 called for applications from the candidates who have possessed the minimum eligibility criteria including the service relaxation for interview before the Selection Committee constituted in accordance with the Regulation 5 of the Act and those who were selected by the selection committee on merit basis were elevated to the higher posts and they joined the higher posts during January 2002; that the petitioners herein did not raise any objection to the said relaxation clause and other norms prescribed in the G.O.Ms.No.270 dated 8.10.2001 and also the notification in Circular No.R3/7425/2001 dated 1.11.2001 and applied for the post of Professor and attended the interview held in January 2002 before the Selection Committee, but when these petitioners were not selected on merit basis, they have chosen to file the above writ petitions challenging the "service relaxation" norms prescribed in clause 2.5 of the G.O.Ms.No.270 dated 8.10.2001 which is unsustainable in law.

8. The further case of the third respondent is that this relaxation is beneficial to more candidates to apply for the higher post, and in no way it restrains and affects the eligibility and right of these petitioners to apply for the post of Professor and therefore, the allegation made against the relaxation of minimum cadre service is devoid of merit and liable to be dismissed; that the fulfilment of minimum qualification prescribed for promotion to a post does not confer any right on the petitioners to claim their promotion, unless they were selected by the Selection Committee constituted for this purpose; that such a claim is unsustainable in law and liable to be dismissed as devoid of merit; that there is no illegality in the relaxation of cadre service as well as selection procedure as alleged by the petitioners; that the selection made on merit basis is well within the powers and jurisdiction of this respondent and therefore, the allegations made in this regard are liable to be dismissed.
9. In the counter affidavit filed on behalf of the respondents 4 to 7, besides generally denying the allegations of the affidavits filed in both the above writ petitions, they would lay emphasis that the G.O.Ms.No.270 Agricultural (AU) Department, d 8.10.2001 was issued by the first respondent only in exercise of the powers vested with them as the authority to lay down the conditions of service of the teachers of Tamil Nadu Agricultural University; that the first respondent has fixed the minimum requirement for appointment of Associate Professor as Professor under the Career Advancement Scheme either with 8 years of service as Associate Professor or 17 years of total service in the University with Ph.D qualification; that in the letter in F.No.21(10)/99-Per.IV dated 19.7.2000, the Indian Council of Agricultural Research has suggested that "if the number of years required in a feeder cadre are less than those stipulated in this notification, thus entailing hardship to those who have completed more than the total number of years in their entire service for eligibility in the cadre, such candidates may be placed in the next higher cadre after adjusting the total number of years"; that this situation is likely to arise as in the earlier scheme the number of years required in feeder cadre were much more than those envisaged under this notification; that this was in conformity with G.O.Ms.No.112 dated 24.3.1999

of the first respondent; that only on the basis of such formulations G.O.Ms.No.270 dated 8.10.2001 of the first respondent was issued.

10. The counter affidavit would further state that there is no statutory provision which makes it obligatory on the State Government to follow the guidelines prescribed by the Indian Council of Agricultural Research; that admittedly what is communicated by Indian Council of Agricultural Research is only the guidelines and it is open to the first respondent to formulate the service conditions adopting the guidelines and deviating from them wherever it is deemed necessary; that there is absolutely no justification in the claim of the petitioners that the promotion given pursuant to the selection by the Selection Committee is illegal; that the petitioners have no right to insist that they should be promoted merely because they are fully qualified according to their own estimate; that having preferred appeal to the first respondent, it is not open to the petitioners to approach this Court even before a decision is taken by the first respondent on their appeals; that it is farce that the petitioners have no other remedy. On such and such other averments the respondents would ultimately seek to dismiss both the above writ petitions.

11. During arguments, the learned counsel appearing for the petitioners would only reiterate the salient points from the pleadings of the writ petitions, those points which have already been pleaded and on the part of the respondents they would cite two judgments in support of their arguments, the first one reported in AIR 2002 SUPREME COURT 790(G.N.Nayak v. Goa University and others) wherein the Hon'ble Apex Court has held that " the respondents knew that there was a change in the eligibility criteria for the post yet he applied for the post and appeared at the interview without protest. He cannot be allowed to now contend that the eligibility criteria were wrongly framed."

Madan Lal and others v. State of Jammu and Kashmir and others, AIR 19 95 SC 1088; Om Prakash Shukla v. Akhilesh Kumar, AIR 1986 SC 1043).

12. The second judgment cited on the part of the respondents is one reported in AIR 2001 SCW 1720 (All India SC & ST Employees Association and another v. A.Arthur Jeen and others) wherein it has been held:
"The selected candidates who were seriously affected had every right to challenge the decision of the Tribunal on all the grounds available to them. The I.C.F administration by its decision to cancel the employment notification and the panel of selected candidates unilaterally could not default or destroy the interest of the successful candidate... The High Court has also noticed that those candidates who had participated in the interview could not challenge the selection before the Tribunal. Thus having regard to all aspects including the changed situation as to the reduction of vacancies from 1917 to 382 on the basis of the revised assumption of vacancies as already stated the above, the impugned order passed by the High Court is just and appropriate."

13. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the

petitioners and the learned Government Advocate appearing on behalf of the first respondent and the learned counsel appearing for the other respondents, what could be assessed is that the writ petitioners in both the above writ petitions have challenged the G.O.Ms.No.270 Agricultural (AU) Department dated 8.10.2001 to quash the points in clause 2.5 thereby relaxing the minimum service in the feeder cadre of Associate Professor for promotion as Professor and the consequential promotions made to the post of Professor pursuant to the G.O., further directing the respondents 2 and 3 to promote the Associate Professors to the post of Professors under the Career Advancement Scheme as per the guidelines prescribed by Indian Council of Agricultural Research. The grievance of the petitioners is that relaxation of minimum service requirement in the cadre of Associate Professor for promotion as Professor is contrary to the guidelines prescribed by the Indian Council of Agricultural Research.

14. However, there is no denying of the fact that the petitioners herein have also applied for the post of Professors and having become unsuccessful, they also preferred appeals to the first respondent Government pointing out the irregularities made in awarding promotions from the post of Associate Professors to that of the Professors since they are contrary to the guidelines prescribed by the Indian Council of Agricultural Research for Career Advancement Scheme and since the petitioners have not received any reply from the first respondent, they would come forward to file the above writ petitions praying for the reliefs extracted supra.

15. Be that as it may. Prior to assessing the merit of the case on the outer periphery on an over all assumption of the facts and circumstances encircling the whole affair connected to both the above writ petitions and the preferring of the appeals to the first respondent Government in the regular course and since there is no reply from the first respondent the petitioners seem to have approached this Court for remedy stating that no alternative remedy is available in spite of having admittedly preferred the appeals before the first respondent Government, it is also the case of the petitioners that they were competitors for the post of professors and they failed to require norms and guidelines fixed by the second and third respondents under the authority of the first respondent Government passed in the G.Os. as cited above and since being a consenting party to the norms or qualifications fixed, they cannot challenge the same since being unsuccessful as it has been held in the above two decisions cited on the part of the respondents. But however, since the appeals preferred by the petitioners before the first respondent Government are said to be pending without a decision taken, the petitioners need not have rushed up to this Court without insisting on the appeals by reminders since the statutory remedy is available for them and hence needless to mention that filing of both the above writ petitions on the part of the petitioners is premature.

16. In these circumstances, it is only desirable on the part of this Court to issue direction to the first respondent to dispose of the appeals preferred by the petitioners in a time bound manner and in respect of such disposals made on the part of the first respondent, still, the petitioners are aggrieved, they will be at liberty to approach this Court in the manner known to law, which would serve the ends of justice and hence the following order:

In result,
(i) both the above writ petitions are dismissed as
premature;
(ii) the first respondent Government is directed to dispose of the appeals preferred by the petitioners relating to the subject covered in both the above writ petitions and if the appeal memos. sent by the petitioners are not available, the petitioners may prefer fresh appeals within 60 days from the date on which this order is made ready and the first respondent shall take them on file and disposing of the same on merits and in accordance with law with an opportunity for the petitioners to be heard within three months thereafter;
(iii) however, in the circumstances of the case, there shall be no order as to costs.

Index:Yes
Internet:Yes
gr.
To
1. The State of Tamilnadu
rep. by its Special
Commissioner & Secretary,
Agricultural Department,
Fort St. George, Chennai-9.
2. The Vice Chancellor,
Tamil Nadu Agricultural
University, Coimbatore-3.
3. The Registrar,
Tamil Nadu Agricultural
University, Coimbatore-3.